AT&T

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July 18, 2001

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW - Room TWB-204
Washington, DC 20554

Re: *Ex Parte* - CC Docket No. 01-100
Application by Verizon of New York, Inc., Verizon Long Distance, Verizon Enterprise, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Connecticut

Dear Ms. Salas:

On yesterday, Richard Rubin and I (both of AT&T) met with Kathy Farroba, Claudia Pabo, and Judy Nitsche of the Common Carrier Bureau. We discussed AT&T's views on Verizon's modification of its resale policy for digital subscriber line (DSL) service provided by Verizon Advanced Data, Inc. (VADI), and the implications of such resale.

As expressed in AT&T's July 10, 2001 comments, Verizon's commitment to "voluntarily make available" DSL service via its affiliate (VADI) while continuing to deny its obligation to make its advanced services generally available for Section 251(c) resale, is insufficient to meet its Section 251 obligations[1]. Indeed, Verizon's offer does not fully implement its checklist obligations with respect to advanced services. The Commission must not allow Verizon to use the proposed VADI DSL resale tariff to escape its larger DSL resale obligations.

Further, the Commission should not allow Verizon to use this particular 271 application - which is essentially a New York "me too" application and affects only 60,000 Connecticut subscribers - to set a DSL resale precedent for other states (given that this issue is part of the record in Verizon's pending Pennsylvania application) or establish new national policy. This issue, though noticed by this Commission, should be thoroughly and efficiently examined before it is decided.

[1] Ex parte letter from James J. Valentino (AT&T) to Ms. Magalie Roman Salas, Secretary, FCC, dated July 10, 2001.

It's critically important that the issues attached to Verizon's resale obligations be fully explored and vetted before the Commission makes a public policy statement on carrier's obligations related to DSL resale.

In accordance with Section 1.1206(a)(2) of the Commission's rules, two copies of this Notice are being submitted to the Secretary of the Commission for inclusion in the public record for the above-captioned proceeding.

Sincerely,

Charles Griffin

cc: K. Farroba
C. Pabo
J. Nitsche

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE OR LATE FILED

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July 18, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room Number TWB-204
445 12th Street, S.W.
Washington, DC, 20554

Re: In the Matter of the Merger of Qwest Communications International, Inc. and U S West Inc., Docket CC-99-272

Dear Ms. Salas:

On behalf of AT&T Corp., the attached letter addressed to Dorothy Attwood and David Solomon was hand-delivered to all addressees today. Please direct any questions to the undersigned.

Respectfully submitted,

Joan Marsh

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List A B C D E

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July 18, 2001

VIA HAND DELIVERY

Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC, 20554

David Solomon
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC, 20554

Re: In the Matter of the Merger of Qwest Communications International, Inc. and U S West Inc., CC Docket No. 99-272

Dear Ms. Attwood and Mr. Solomon:

AT&T Corp. ("AT&T") hereby submits these comments in response to the letter from Arthur Anderson LLP to Ms. Dorothy Atwood, Chief, Common Carrier Bureau, dated June 6, 2001 ("Auditor's June 6 Letter"), setting forth the additional findings by the auditor in connection with the above referenced proceeding.

Findings 2 and 7: Qwest May Not Use Indefeasible Rights-Of-Use to Circumvent Section 271.

The auditor found that Qwest is providing in-region interLATA services to a number of accounts -- somewhere between 14 and 25 accounts[1] -- by using Indefeasible Rights of Use ("IRUs"). The auditor, however, failed to explain what those IRUs involve. Instead of conducting such an investigation, the auditor merely stated that Qwest believes that it is permitted to sell in-region interLATA services using IRUs, and then noted that it is not in a position to make a legal determination regarding the matter.

That is a significant deficiency. A properly conducted audit investigation would have allowed the Commission to ascertain whether Qwest is violating Section 271 and the *Qwest Merger Orders*[2] by urging customers to use IRUs to transport their in-region interLATA traffic to a Qwest out-of-region point of presence ("POP"). Indeed, any attempt to break down a unitary call into separate in-region and out-of-region components by using an IRU to handle an isolated portion of the call would

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1 Finding 2 states that 11 accounting codes were either corporate communications or IRU transactions. Furthermore, the 14 IRUs referred to in Finding 7 were identified from a statistical sample of 92 in-region service component codes for account records with non-metered service, representing 15% of that sample. There were, of course, 266 such account records. Assuming that component codes and account records have a one-to-one ratio, there could be as many as 40 IRUs (15% of 266). In all events, because of the fact that these accounts were already identified as otherwise violating Section 271, the auditor should have reviewed all 266 accounts.

2 Memorandum Op. and Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd. 5376 (March 10, 2000) ("*March 10 Merger Order*"); Memorandum Op. and Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 11909 (June 26, 2000) ("*June 26 Qwest Merger Order*").

violate both the Act[3] and Commission precedent.[4] For example, in the *June 26 Qwest Merger Order,* the Commission required Qwest to amend its divestiture report so that the entity which Qwest selected to carry in-region interLATA Internet traffic would not direct that traffic to any Qwest router located outside of Qwest's region.[5] Accordingly, this new attempt by Qwest to claim that it may sell interLATA services by using IRUs to parse a single call into its component parts similarly must be seen for what it is -- a violation of Section 271 and and the *Qwest Merger Orders.*[6]

Finding 7 Also Undercuts Qwest's Alleged Excuse for Inadvertently Violating Section 271.

In its Certification, Qwest alleged that certain "process errors" led to a number of inadvertent Section 271 violations. Specifically, Qwest alleged that 458 customers billed by Qwest for Qwest-branded in-region interLATA service "were not tagged for divestiture to Touch America"[7] because the customers had entered into contracts for

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[3] Under the Telecommunications Act, Qwest (U S West) may provide only "*interLATA services originating* outside its in-region States" until it receives Section 271 approval. 47 U.S.C. § 271(b)(2). "InterLATA services" are defined as "*telecommunications* between a point located in a local access and transport area and a point located outside such area,"47 U.S.C. § 153(21), and "telecommunications" are defined as "the transmission, *between or among points specified by the user*, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43) (emphasis added).

[4] *See, e.g., AT&T v. Ameritech et al.*, Memorandum Opinion and Order, 13 FCC Rcd 21438, ¶ 30 (1998), *aff'd sub nom. US West Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert denied*, 120 S. Ct. 1240 (2000) ("*Qwest Teaming Order*") (the Commission did not parse the call between the exchange access provided by U S West and the interLATA carriage provided by the long distance carrier, but instead viewed the call as a single in-region interLATA call).

[5] *June 26 Qwest Merger Order* ¶ 38.

[6] Specifically, ¶ 9 of *June 26 Qwest Merger Order* refers to Qwest's commitment to divest "[a]ll dedicated services that cross LATA boundaries and that have one or both termination points located in the 14 U S WEST states, including private lines, dedicated access lines, and frame relay/asynchronous transfer mode (ATM) circuits."

[7] Certification of Qwest, dated April 16, 2001 ("Qwest Certification") ¶ 7

new in-region interLATA services prior to divestiture but their "service orders *had not been entered* into Qwest's order entry system prior to the time that this system was temporarily shut down as part of the final divestiture implementation process."[8]

The Auditor's June 6 Letter, however, states that when the auditor sought to validate this allegation, it found that, out of a statistical sample of 92 in-region component codes, "for 73 of the in-region service component codes, the in-region service was input [sic] into the order entry system *prior to divestiture* but was not provisioned or billed until after divestiture."[9] Since the in-region service orders were inputted *prior* to divestiture, the customers should have been "tagged for divestiture to Touch America."[10]

Finding 8: Qwest Continues to Bill and Collect Revenue For Qwest-Branded In-Region InterLATA Calls.

The auditor found that Qwest is *still collecting* an unquantified amount of revenue from 12 accounts where in-region interLATA traffic is branded as Qwest

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8 *Id.* (emphasis added).

9 Auditor's June 6 Letter, Finding 7.

10 Finally, the auditor sets forth (in Finding 2) but does not confirm Qwest's assertion that the 11 accounts identified by the auditor qualified as permissible corporate communications under Section 271. Under Section 271(f), Qwest may provide in-region interLATA corporate communications services known as "Official Services." *See, U.S. v. Western Electric Co.*, 569 F. Supp 1057, 1097 (D.D.C.), *aff'd sub nom. California v. U.S.*, 464 U.S. 1013 (1983) (identified as "communications between personnel or equipment of an Operating Company located in various areas and communications between Operating Companies and their customers" -- the latter services involve such things as directory assistance where "any interLATA administrative facilities involved are not 'for hire'" *id.* at n. 175; *see id.* at n. 179 describing four basic categories of Official Service systems). The auditing obligations of the *Qwest Merger Orders,* at a bare minimum, required the auditor to verify that the accounts were indeed "Official Services."

traffic. This reflects a continuing violation of the *Qwest Merger Orders* and Section 271.[11]

Finding 9: Qwest Has Not Provided Touch America With All of the Revenues from Qwest-Branded In-Region InterLATA Calls.

The auditor found that Qwest paid Touch America less than 40% of the "revenues billed" to 266 customers for Qwest-branded in-region interLATA services provided prior to March 2001.[12] The auditor explains that this smaller sum paid by Qwest to Touch America reflects "an initial settlement of the amount due to Touch America" and that the final payment may be less than the amount billed to customers "because of amounts billed but not collected from certain customers."[13]

This finding is problematic for two reasons. First, it appears from the Auditor's Letter that Qwest has not paid, nor does it intend to pay, Touch America any increment for interest covering the period that Qwest wrongfully withheld the money collected.[14] Because Qwest had received Touch America's money, it should be made to also pay Touch America interest on it. Second, the auditor's reference to an "initial settlement" suggests that Qwest and Touch America may have agreed to a payment that is less than the amount of revenues collected. But, based on the record, there appears to be nothing for the parties to "settle." The auditor not only failed to explain the reason for the alleged settlement but also failed to investigate whether there was a *bona fide* settlement. Absent a showing that there was indeed something

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11 The proferred explanations for the error – improperly identified internal Qwest communications or pre-divestiture sales provisioned and billed after the original query was run – even if true, do not render Qwest's realization of revenue from these sales any less a violation of Section 271 or the *Qwest Merger Orders*, and the veracity of these explanations was apparently not examined by the auditor. Auditor June 6 Letter at 4.

12 That is, Qwest has paid Touch America only $856,863 out of $2,212,730 billed under for in-region interLATA services sold under Qwest's brand.

13 Finding 9.

14 It appears from the April 16, 2001 Auditor's Report, Attachment 1, p. 1, and the Qwest Certification, ¶ 9, that the affected billings were calculated before interest.

to be settled, Qwest should be made to disgorge immediately all of the revenues collected, with interest, to Touch America.

* * *

In light of the additional evidence of Section 271 violations identified in the Auditor's June 6 Letter, AT&T respectfully submits that the Commission should: (1) mandate a detailed audit report of all Qwest IRU transactions; (2) order Qwest to stop violating Section 271 by providing interLATA services by means of IRUs; (3) order Qwest to disgorge immediately all revenues -- including revenues from all the IRU transactions -- collected, including interest; and, (4) levy a fine against Qwest equal to the amount of revenue billed[15] from all prohibited activities, including IRU transactions.

Thank you for your attention to this matter. Please direct any questions to the undersigned.

Sincerely,

Aryeh S. Friedman

cc: Carol Mattey
Anthony Dale
Christopher Libertelli

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[15] Revenues *billed*, not only those collected, under Qwest's brand measures the full extent to which Qwest has unlawfully "held itself out" as a "one stop" provider of all distance services originating in-region in violation of Section 271 and hence should be the basis for any fine imposed by the Commission.